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C O N F I D E N T I A L NASSAU 000899

E.O. 12958: DECL: 12/16/2018
TAGS: [SNAR](#) [PREL](#) [UK](#) [BF](#)
SUBJECT: DRUG CASE CHALLENGES CONSTITUTIONALITY OF BAHAMIAN
WIRE TAP LAW

Classified By: AMBASSADOR NED L. SIEGEL FOR REASONS 1.4 (B) AND (D).

¶1. (C) SUMMARY: Accused drug trafficker and former fugitive Melvin Maycock Sr. has challenged the constitutionality of the Bahamian Listening Devices Act in an attempt to undermine the evidence against him and to thwart attempts to extradite him to the United States. Maycock's argument was rejected by the Bahamian Supreme Court, however, his lawyers have stated their intention to appeal the decision to the Court of Appeals and, if necessary, to the Privy Council in London. A repudiation of the Listening Devices Act would jeopardize other extradition requests pending in Bahamian courts as well as handicap ongoing Royal Bahamian Police Force (RBPF) and U.S. Drug Enforcement Administration (DEA) investigations. Convictions obtained in Bahamian courts under the current law would also be called into question. GCOB officials are confident the constitutionality of law will be upheld, but they are making plans for less favorable contingencies. END SUMMARY.

¶2. (C) Accused drug trafficker and former fugitive Melvin Maycock Sr. has challenged the constitutionality of the Bahamian Listening Devices Act in an attempt to undermine the evidence against him and to thwart attempts to extradite him to the United States. In addition to charges of drug smuggling and illegal weapons possession in The Bahamas, Maycock is wanted in connection with an April 2004 indictment on drug smuggling charges in the Southern District of Florida. His argument against the Listening Devices Act is based on its lack of provisions for judicial review. Under current law, only the recommendation of the police commissioner and the approval of the minister for national security are required to intercept the communications of subjects of interest to law enforcement. In practice, the police commissioner makes these decisions with only slight oversight.

¶3. (C) Maycock's argument was rejected by the Bahamian Supreme Court on November 18, however his lawyers have stated their intention to appeal the decision to the Bahamian Court of Appeals and to the Privy Council in London, if necessary. (NOTE: The Court of Appeals is the highest court resident in The Bahamas. Its decisions may be appealed to the Judicial Committee of Her Majesty's Privy Council, which acts as the court of last resort for The Bahamas. END NOTE). Though no date has been set, GCOB officials expect the case to come before the Court of Appeals in late January or early February. Assuming the Supreme Court's decision is upheld, the Privy Council could take up the case as early as the summer of 2009.

¶4. (C) Though officials involved in the Maycock case have told EMBOFF they expect the Court of Appeals and the Privy Council to uphold the Listening Devices Act, the GCOB is quietly drafting a new electronic surveillance law for parliament's consideration should the current law be found

unconstitutional. Though very much in the notional stages, the new law would include some form of judicial oversight, possibly modeled on the U.S. Foreign Intelligence Surveillance Act (FISA) court.

15. (C) COMMENT: While our GCOB interlocutors believe the Listening Devices Act will be upheld, it is worth considering the consequences of the law's invalidation. Until a new law could be enacted, RBPF and DEA would be without their most potent tool for investigating and tracking drug smugglers operating in The Bahamas. Such a disruption would also negatively impact DEA investigations outside of The Bahamas since information obtained through Bahamian wire taps frequently informs and guides investigations in Colombia, Venezuela, the U.S. and elsewhere in the region. Convictions based on evidence obtained under the current law could be called into question and would cause further delays for the sluggish Bahamian criminal justice system. END COMMENT.
SIEGEL